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Attorneys for Plaintiffs FAMILYMEDS, INC., a Connecticut corporation and FAMILYMEDS GROUP, INC. a Nevada corporation, f/k/a DRUGMAX, INC., a Nevada corporation

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

FAMILYMEDS, INC., a Connecticut corporation; and FAMILYMEDS GROUP, INC. a Nevada corporation, f/k/a DRUGMAX, INC., a Nevada corporation,

Plaintiffs,

v.

MCKESSON CORPORATION, a Delaware corporation; and D&K HEALTHCARE RESOURCES LLC, a Delaware limited liability company, f/k/a D&K HEALTHCARE RESOURCES, INC., a Delaware corporation,

Defendants.

RELATED CASE NO. CV082850 BZ
 CASE NO. CV075715 WDB

DECLARATION OF MATTHEW S. KENEFICK IN SUPPORT OF ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED
[Local Rule 3-12(b)]

Accompanying Papers: Motion; Request for Judicial Notice; and (Proposed) Order

Complaint filed: June 6, 2008
 Trial date: none set

I, Matthew S. Kenefick, declare:

1. I am an attorney at law duly licensed to practice before all the Courts of the state of California, as well as all of the United States District Courts located within the state of California, and am an attorney with Jeffer, Mangels, Butler & Marmaro LLP ("**JMBM**"), attorneys of record for Plaintiffs Familymeds, Inc., a Connecticut corporation and Familymeds Group, Inc. a Nevada corporation, f/k/a DrugMax, Inc., a Nevada corporation (collectively "**Familymeds**"). I have

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1 personal knowledge of the facts set forth in this declaration and could competently testify to each of
 2 the facts if called upon to do so. My knowledge of the facts set forth in this declaration arises from
 3 the fact that at all applicable times, either I or one of my colleagues at JMBM have been one of the
 4 attorneys primarily responsible for the litigation of the within action.

5 2. On June 9, 2008, I sent to Maria Pum and Kristen Caverly, attorneys of record for
 6 McKesson Corporation in the matter of *McKesson Corporation v. Familymeds Group etc.*, Northern
 7 District of California Case Number CV075715 WDB, filed on November 9, 2007 (the "**First**
 8 **Action**"), an e-mail correspondence requesting that: A) Ms. Pum and/or Ms. Caverly confirm that
 9 their office will be representing McKesson Corporation, a Delaware corporation, and D&K
 10 Healthcare Resources LLC, a Delaware limited liability company, f/k/a D&K Healthcare
 11 Resources, Inc., a Delaware corporation (collectively "**Defendants**") in the matter of *Familymeds*
 12 *Inc. etc., et al. v. McKesson Corporation etc., et al.*, Northern District of California Case Number
 13 CV082850 BZ, filed on June 6, 2008 (the "**Second Action**"); and B) that Defendants stipulate to the
 14 designation of the Second Action as related to the First Action, and to the re-assignment of the
 15 Second Action to the Honorable Wayne D. Brazil, the Court before which the earlier filed and
 16 numbered First Action is pending (the "**Request**"). A true and correct copy of the Request is
 17 attached hereto as **Exhibit 1**. Ms. Pum read the request on or about June 10, 2008 at 10:07 a.m. -
 18 attached hereto as **Exhibit 2** is a true and correct copy of a Microsoft Outlook read-receipt
 19 indicating this.

20 3. On June 12, 2008, I called Ms. Pum to discuss the Request. Ms. Pum informed me
 21 that Ms. Caverly was out of the office and that Ms. Pum had been unable to reach anyone at
 22 McKesson Corporation to discuss the Request. Ms. Pum further advised me that she hoped to be
 23 able to have an answer to me regarding the Request during the week of June 16-20, 2008; however,
 24 could not commit to any specific date. I advised Ms. Pum that to comply with Familymeds'
 25 obligations under the Local Rules, Familymeds would file this Administrative Motion and if
 26 Defendants had not been able to respond to the Request by that time, then Defendants could indicate
 27 whether they would stipulate to this Administrative Motion in their response thereto.

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I declare certify under penalty of perjury that the foregoing is true and correct.

Executed on June 16, 2008

/S/ Matthew S. Kenefick
MATTHEW S. KENEFICK, Declarant

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EXHIBIT 1

Kenefick, Matthew

From: Kenefick, Matthew
Sent: Monday, June 09, 2008 9:31 PM
To: mpum@hcesq.com; Kristen Caverly
Cc: Gebhardt, Robert C.
Subject: Familymeds, Inc. et al. v. D&K etc. et al.

Attachments: Complaint.pdf

Maria/Kristen-

Please find attached a .pdf scan of the complaint filed on June 6, 2008 by Familymeds, Inc. and Familymeds Group, Inc. against D&K Healthcare Resources, LLC and McKesson Corporation (the "**Second Action**").

Please confirm that your office will be representing D&K Healthcare Resources, LLC and McKesson Corporation in the Second Action. Please let me know if you are willing to accept service on behalf of D&K Healthcare Resources, LLC and McKesson Corporation. Additionally, please let me know, on or before the end of business Wednesday June 11, 2008, if D&K Healthcare Resources, LLC and McKesson Corporation will stipulate to the designation of the Second Action as related to the *McKesson etc. v. Familymeds etc.* lawsuit currently before Magistrate Judge Brazil, and to the re-assignment of the Second Action to Judge Brazil.

Thank you again,
-Matt

Matthew Kenefick for
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Complaint.pdf (333
KB)

EXHIBIT /

EXHIBIT 2

Kenefick, Matthew

From: Maria Pum [mpum@hcesq.com]
To: undisclosed-recipients
Sent: Tuesday, June 10, 2008 10:07 AM
Subject: Read: Familymeds, Inc. et al. v. D&K etc. et al.

Your message

To: mpum@hcesq.com
Subject:

was read on 6/10/2008 10:07 AM.

EXHIBIT 2